

AMENDED IN ASSEMBLY MARCH 28, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 1417

Introduced by Assembly Member Blanca Rubio

February 22, 2019

An act to amend ~~Section 26051.5~~ of Section 26151 of, to add 26151.5 to, and to add Chapter 4.5 (commencing with Section 17151) to Part 2 of Division 7 of, the Business and Professions Code, and to add Section 3494.1 to the Civil Code, relating to cannabis.

LEGISLATIVE COUNSEL'S DIGEST

AB 1417, as amended, Blanca Rubio. Cannabis—licensing—advertisement and marketing: internet: license number: statements: unfair business practice: public nuisance.

(1) *The Control, Regulate and Tax Adult Use of Marijuana Act of 2016 (AUMA), an initiative measure approved as Proposition 64 at the November 8, 2016, statewide general election, authorizes a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances. The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities. MAUCRSA imposes duties on the Bureau of Cannabis Control in the Department of Consumer Affairs, the Department of Food and Agriculture, and the State Department of Public Health with respect to the creation, issuance, denial, suspension, and revocation of licenses issued pursuant to MAUCRSA.*

MAUCRSA requires all cannabis advertisements and marketing to accurately and legibly identify the licensee responsible for that content by adding, at a minimum, the licensee's license number.

This bill would impose a civil penalty on any person that violates that requirement, not to exceed \$2,500 per day for each violation. The bill would allow the Attorney General, a district attorney, a city attorney or prosecutor, or a person in the public interest to bring a civil action for the civil penalty, as specified.

MAUCRSA, in addition to the requirement that all cannabis advertisements and marketing accurately and legibly identify the licensee responsible for the content, also places certain audience restrictions and age affirmation requirements on cannabis advertisement and marketing.

This bill would require an operator of an internet website, online service, online application, or mobile application that is operated primarily for the purpose of promoting, or disseminating information about, the sale of cannabis products in the State of California to display a clear and reasonable statement, meeting specified requirements, to individuals who visit or use the internet website, online service, online application, or mobile application, containing specified explanations, including, among others, that cannabis products sold by unlicensed entities may not meet the safety, quality, or other standards required for the lawful sale of cannabis products by the State of California. The bill would prohibit an operator of an internet website, online service, online application, or mobile application that is operated primarily for the purpose of promoting, or disseminating information about, the sale of cannabis products in the State of California from displaying an advertisement for the sale of cannabis products unless the advertisement displays the license number of the licensee to which the advertisement pertains. This bill would impose a civil penalty on any person that violates these requirements, not to exceed \$2,500 per day for each violation. The bill would allow the Attorney General, a district attorney, a city attorney or prosecutor, or a person in the public interest to bring a civil action for the civil penalty, as specified.

This bill would require all civil penalties collected by civil action brought by the Attorney General or a person in the public interest pursuant to the provisions of this bill described above to be deposited into the Cannabis Advertisement Penalties Account, which this bill would create as an account in the Cannabis Control Fund, and would require, upon appropriation by the Legislature, all amounts deposited

in the account to be allocated to licensing authorities to be used toward after requirement to costs enforcement efforts against unlicensed commercial cannabis activity. The bill would require all civil penalties collected by a civil action brought by a district attorney or a city attorney or prosecutor to be used towards enforcement efforts against unlicensed commercial cannabis activity after reimbursement for costs.

(2) Existing unfair competition laws establish a statutory cause of action for unfair competition, including any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising and acts prohibited by false advertisement laws.

This bill would make it an unfair business practice, in violation of unfair competition laws, for any advertising or marketing for cannabis goods that is placed in broadcast, cable, radio, print, and digital communications to fail to prominently include in any advertisement or marketing an active state license number issued by the Bureau of Cannabis Control, Department of Food and Agriculture, or the State Department of Public Health pursuant to MAUCRSA for the person whose commercial cannabis activity or cannabis product is being advertised or marketed.

This bill would also make it an unfair business practice, in violation of unfair competition laws, for any broadcaster, cable, radio, printer, or provider of digital communications, including, but not limited to, a technology platform provider, to fail to prominently include in any advertisement or marketing an active state license issued pursuant to MAUCRSA from the Bureau of Cannabis Control, Department of Food and Agriculture, or the State Department of Public Health for the commercial cannabis activity or cannabis product being advertised or marketed. The bill, in any civil action for injunctive relief under unfair competition laws, brought by any person pursuing representative claims or relief on behalf of others against any broadcaster, cable, radio, printer, or provider of digital communications, including, but not limited to, a technology platform provider, for that unfair business practice, would deem that the question is one of a common or general interest, of many persons, the parties are numerous, and it is impracticable to bring them all before the court such that the claimant meets the requirements for a class action.

(3) Existing law defines a public nuisance as one that affects an entire community or neighborhood at the same time, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and provides that a public

nuisance may be remedied by an indictment or information, a civil action, or abatement.

This bill would make any advertisement or marketing that fails to prominently include an active state license number issued by the Bureau of Cannabis Control, Department of Food and Agriculture, or the State Department of Public Health pursuant to MAUCRSA for the person whose commercial cannabis activity or cannabis product is being advertised or marketed a public nuisance.

(4) AUMA authorizes the Legislature to amend the act to further the purposes and intent of the act with a ²/₃ vote of the membership of both houses of the Legislature, except as provided.

This bill would declare that its provisions further the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act.

~~The Control, Regulate and Tax Adult Use of Marijuana Act of 2016 (AUMA), an initiative measure approved as Proposition 64 at the November 8, 2016, statewide general election, authorizes a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances.~~

~~The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities and requires an applicant for any type of license issued under MAUCRSA to provide to the licensing authority specified information.~~

~~This bill would make nonsubstantive changes to those provisions.~~

Vote: ~~majority~~²/₃. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Chapter 4.5 (commencing with Section 17151)*
2 *is added to Part 2 of Division 7 of the Business and Professions*
3 *Code, to read:*

4
5 *CHAPTER 4.5. CANNABIS ADVERTISEMENT*

6
7 17151. *For purposes of this chapter, “commercial cannabis*
8 *activity” and “cannabis product” have the same meanings as*
9 *those terms are defined in Section 26001.*

10 17152. *It is an unfair business practice for any advertising or*
11 *marketing for cannabis goods that is placed in broadcast, cable,*

1 radio, print, and digital communications to fail to prominently
2 include in any advertisement or marketing an active state license
3 number issued by the Bureau of Cannabis Control, Department
4 of Food and Agriculture, or the State Department of Public Health
5 pursuant to Division 10 (commencing with Section 26000) for the
6 person whose commercial cannabis activity or cannabis product
7 is being advertised or marketed.

8 17153. (a) It is an unfair business practice for any broadcaster,
9 cable, radio, printer, or provider of digital communications,
10 including, but not limited to, a technology platform provider, to
11 fail to prominently include in any advertisement or marketing an
12 active state license number issued by the Bureau of Cannabis
13 Control, Department of Food and Agriculture, or the State
14 Department of Public Health pursuant to Division 10 (commencing
15 with Section 26000) for the person whose commercial cannabis
16 activity or cannabis product is being advertised or marketed.

17 (b) In any civil action for injunctive relief pursuant to Section
18 17203 brought by any person pursuing representative claims or
19 relief on behalf of others against any broadcaster, cable, radio,
20 printer, or provider of digital communications, including, but not
21 limited to, a technology platform provider, for an act prohibited
22 by subdivision (a), it shall be deemed that the question is one of a
23 common or general interest, of many persons, the parties are
24 numerous, and it is impracticable to bring them all before the court
25 such that the claimant meets the requirements of Section 382 of
26 the Code of Civil Procedure.

27 SEC. 2. Section 26151 of the Business and Professions Code
28 is amended to read:

29 26151. (a) (1) All advertisements and marketing shall
30 accurately and legibly identify the licensee responsible for its
31 content, by adding, at a minimum, the licensee's license number.

32 (2) A technology platform shall not display an advertisement
33 by a licensee on an ~~Internet Web page~~ internet web page unless
34 the advertisement displays the license number of the licensee.

35 (3) An outdoor advertising company subject to the Outdoor
36 Advertising Act (Chapter 2 (commencing with Section 5200) of
37 Division 3) shall not display an advertisement by a licensee unless
38 the advertisement displays the license number of the licensee.

39 (b) Any advertising or marketing placed in broadcast, cable,
40 radio, print, and digital communications shall only be displayed

1 where at least 71.6 percent of the audience is reasonably expected
2 to be 21 years of age or older, as determined by reliable, up-to-date
3 audience composition data.

4 (c) Any advertising or marketing involving direct, individualized
5 communication or dialogue controlled by the licensee shall utilize
6 a method of age affirmation to verify that the recipient is 21 years
7 of age or older before engaging in that communication or dialogue
8 controlled by the licensee. For purposes of this section, that method
9 of age affirmation may include user confirmation, birth date
10 disclosure, or other similar registration method.

11 (d) All advertising shall be truthful and appropriately
12 substantiated.

13 (e) (1) *Any person who has violated paragraph (1) of*
14 *subdivision (a) shall be liable for a civil penalty not to exceed two*
15 *thousand five hundred dollars (\$2,500) per day for each violation*
16 *in addition to any other penalty established by law.*

17 (2) *A civil penalty may be assessed and recovered pursuant to*
18 *this section in a civil action brought in any court of competent*
19 *jurisdiction by any of the following:*

20 (A) *The Attorney General in the name of the people of the State*
21 *of California.*

22 (B) *Any district attorney.*

23 (C) *Any city attorney of a city having a population in excess of*
24 *750,000 or, with the consent of the district attorney, by a city*
25 *prosecutor in any city or city and county having a full-time city*
26 *prosecutor.*

27 (D) *Any person who brings the action in the public interest if*
28 *both of the following apply:*

29 (i) *The action is commenced more than 60 days after the person*
30 *has given notice of the violation that is the subject of the action to*
31 *the Attorney General and the district attorney and any city attorney*
32 *or prosecutor in whose jurisdiction the violation is alleged to occur*
33 *and to the alleged violator.*

34 (ii) *Neither the Attorney General nor any district attorney nor*
35 *any city attorney or prosecutor has commenced and is diligently*
36 *prosecuting an action against that violation.*

37 (3) (A) *Notwithstanding subdivision (b) of Section 26038, all*
38 *civil penalties collected by a civil action brought by the Attorney*
39 *General or by a person in the public interest pursuant to this*
40 *subdivision shall be deposited into the Cannabis Advertisement*

1 *Penalties Account, which is hereby created as an account in the*
2 *Cannabis Control Fund. Upon appropriation by the Legislature,*
3 *all amounts deposited in the Cannabis Advertisement Penalties*
4 *Account shall be allocated to licensing authorities to be used*
5 *toward enforcement efforts against unlicensed commercial*
6 *cannabis activity.*

7 *(B) All civil penalties collected by a civil action brought by a*
8 *district attorney or a city attorney or prosecutor shall be used*
9 *towards enforcement efforts against unlicensed commercial*
10 *cannabis activity, after reimbursement to the city or county, as*
11 *applicable, for the costs of bringing the civil action.*

12 *SEC. 3. Section 26151.5 is added to the Business and*
13 *Professions Code, to read:*

14 *26151.5. (a) An operator of an internet website, online service,*
15 *online application, or mobile application that is operated primarily*
16 *for the purpose of promoting, or disseminating information about,*
17 *the sale of cannabis products in the State of California shall display*
18 *a clear and reasonable statement to individuals who visit or use*
19 *the internet website, online service, online application, or mobile*
20 *application, explaining all of the following:*

21 *(1) The unlicensed sale of cannabis products by any entity not*
22 *licensed for that sale by the State of California and the locality*
23 *within which that entity is doing business violates California law.*

24 *(2) The cannabis products sold by unlicensed entities may not*
25 *meet the safety, quality, or other standards required for the lawful*
26 *sale of cannabis products by the State of California.*

27 *(3) Consumers who purchase cannabis products from unlicensed*
28 *entities do so at their own risk.*

29 *(b) The clear and reasonable statement required pursuant to*
30 *this section shall meet both of the following requirements:*

31 *(1) Be prominently displayed on any homepage and landing*
32 *page of the operator's internet website, online service, online*
33 *application, or mobile application.*

34 *(2) Be legibly displayed on any and all of the operator's own*
35 *advertising or marketing material.*

36 *(c) An operator of an internet website, online service, online*
37 *application, or mobile application that is operated primarily for*
38 *the purpose of promoting, or disseminating information about, the*
39 *sale of cannabis products in the State of California shall not*
40 *display an advertisement for the sale of cannabis products unless*

1 *the advertisement displays the license number issued pursuant to*
2 *this division of the licensee to which the advertisement pertains.*

3 *(d) (1) Any person who has violated this section shall be liable*
4 *for a civil penalty not to exceed two thousand five hundred dollars*
5 *(\$2,500) per day for each violation in addition to any other penalty*
6 *established by law.*

7 *(2) A civil penalty may be assessed and recovered pursuant to*
8 *this section in a civil action brought in any court of competent*
9 *jurisdiction by any of the following:*

10 *(A) The Attorney General in the name of the people of the State*
11 *of California.*

12 *(B) Any district attorney.*

13 *(C) Any city attorney of a city having a population in excess of*
14 *750,000 or, with the consent of the district attorney, by a city*
15 *prosecutor in any city or city and county having a full-time city*
16 *prosecutor.*

17 *(D) Any person who brings the action in the public interest if*
18 *both of the following apply:*

19 *(i) The action is commenced more than 60 days after the person*
20 *has given notice of the violation which is the subject of the action*
21 *to the Attorney General and the district attorney and any city*
22 *attorney in whose jurisdiction the violation is alleged to occur and*
23 *to the alleged violator.*

24 *(ii) Neither the Attorney General nor any district attorney nor*
25 *any city attorney or prosecutor has commenced and is diligently*
26 *prosecuting an action against such violation.*

27 *(3) (A) Notwithstanding subdivision (b) of Section 26038, all*
28 *civil penalties collected by a civil action brought by the Attorney*
29 *General or by a person in the public interest pursuant to this*
30 *subdivision shall be deposited into the Cannabis Advertisement*
31 *Penalties Account, which is hereby created as an account in the*
32 *Cannabis Control Fund. Upon appropriation by the Legislature,*
33 *all amounts deposited in the Cannabis Advertisement Penalties*
34 *Account shall be allocated to licensing authorities to be used*
35 *toward enforcement efforts against unlicensed commercial*
36 *cannabis activity.*

37 *(B) All civil penalties collected by a civil action brought by a*
38 *district attorney or a city attorney or prosecutor shall be used*
39 *toward enforcement efforts against unlicensed commercial*

1 *cannabis activity, after reimbursement to the city or county, as*
2 *applicable, for the costs of bringing the civil action.*

3 *SEC. 4. Section 3494.1 is added to the Civil Code, to read:*

4 *3494.1. Any advertisement or marketing that fails to*
5 *prominently include an active state license number issued by the*
6 *Bureau of Cannabis Control, Department of Food and Agriculture,*
7 *or the State Department of Public Health pursuant to Division 10*
8 *(commencing with Section 26000) for the person whose commercial*
9 *cannabis activity or cannabis product is being advertised or*
10 *marketed is a public nuisance.*

11 *SEC. 5. The Legislature finds and declares that this act furthers*
12 *the purposes and intent of the Control, Regulate and Tax Adult*
13 *Use of Marijuana Act.*

14 ~~SECTION 1. Section 26051.5 of the Business and Professions~~
15 ~~Code is amended to read:~~

16 ~~26051.5. (a) An applicant for any type of state license issued~~
17 ~~pursuant to this division shall do all of the following:~~

18 ~~(1) Require that each owner electronically submit to the~~
19 ~~Department of Justice fingerprint images and related information~~
20 ~~required by the Department of Justice of all applicants for any type~~
21 ~~of state license issued pursuant to this division, for the purpose of~~
22 ~~obtaining information as to the existence and content of a record~~
23 ~~of state or federal convictions and state and federal arrests, and~~
24 ~~also information as to the existence and content of a record of state~~
25 ~~or federal convictions and arrests for which the Department of~~
26 ~~Justice establishes that the person is free on bail or on their own~~
27 ~~recognizance pending trial or appeal.~~

28 ~~(A) Notwithstanding any other law, the Bureau of Cannabis~~
29 ~~Control, the Department of Food and Agriculture, and the State~~
30 ~~Department of Public Health may obtain and receive, at their~~
31 ~~discretion, criminal history information from the Department of~~
32 ~~Justice and the Federal Bureau of Investigation for an applicant~~
33 ~~for any state license under this division, including any license~~
34 ~~established by a licensing authority by regulation pursuant to~~
35 ~~subdivision (b) of Section 26012.~~

36 ~~(B) When received, the Department of Justice shall transmit~~
37 ~~fingerprint images and related information received pursuant to~~
38 ~~this section to the Federal Bureau of Investigation for the purpose~~
39 ~~of obtaining a federal criminal history records check. The~~
40 ~~Department of Justice shall review the information returned from~~

1 the Federal Bureau of Investigation and compile and disseminate
2 a response to the licensing authority.

3 (C) The Department of Justice shall provide a response to the
4 licensing authority pursuant to paragraph (1) of subdivision (p) of
5 Section 11105 of the Penal Code.

6 (D) The licensing authority shall request from the Department
7 of Justice subsequent notification service, as provided pursuant to
8 Section 11105.2 of the Penal Code, for applicants.

9 (E) The Department of Justice shall charge the applicant a fee
10 sufficient to cover the reasonable cost of processing the requests
11 described in this paragraph.

12 (2) Provide evidence of the legal right to occupy and use the
13 proposed location and provide a statement from the landowner of
14 real property or that landowner's agent where the commercial
15 cannabis activity will occur, as proof to demonstrate the landowner
16 has acknowledged and consented to permit commercial cannabis
17 activities to be conducted on the property by the tenant applicant.

18 (3) Provide evidence that the proposed location is in compliance
19 with subdivision (b) of Section 26054.

20 (4) Provide a statement, signed by the applicant under penalty
21 of perjury, that the information provided is complete, true, and
22 accurate.

23 (5) (A) For an applicant with 20 or more employees, provide
24 a statement that the applicant will enter into, or demonstrate that
25 it has already entered into, and abide by the terms of a labor peace
26 agreement.

27 (B) For the purposes of this paragraph, "employee" does not
28 include a supervisor.

29 (C) For the purposes of this paragraph, "supervisor" means an
30 individual having authority, in the interest of the applicant, to hire,
31 transfer, suspend, lay off, recall, promote, discharge, assign,
32 reward, or discipline other employees, or responsibility to direct
33 them or to adjust their grievances, or effectively to recommend
34 such action, if, in connection with the foregoing, the exercise of
35 that authority is not of a merely routine or clerical nature, but
36 requires the use of independent judgment.

37 (6) Provide the applicant's valid seller's permit number issued
38 pursuant to Part 1 (commencing with Section 6001) of Division 2
39 of the Revenue and Taxation Code or indicate that the applicant
40 is currently applying for a seller's permit.

- 1 ~~(7) Provide any other information required by the licensing~~
2 ~~authority.~~
- 3 ~~(8) For an applicant seeking a cultivation license, provide a~~
4 ~~statement declaring the applicant is an “agricultural employer,” as~~
5 ~~defined in the Alatorre-Zenovich-Dunlap-Berman Agricultural~~
6 ~~Labor Relations Act of 1975 (Part 3.5 (commencing with Section~~
7 ~~1140) of Division 2 of the Labor Code), to the extent not prohibited~~
8 ~~by law.~~
- 9 ~~(9) Pay all applicable fees required for licensure by the licensing~~
10 ~~authority.~~
- 11 ~~(10) Provide proof of a bond to cover the costs of destruction~~
12 ~~of cannabis or cannabis products if necessitated by a violation of~~
13 ~~licensing requirements.~~
- 14 ~~(11) (A) Provide a statement, upon initial application and~~
15 ~~application for renewal, that the applicant employs, or will employ~~
16 ~~within one year of receiving or renewing a license, one supervisor~~
17 ~~and one employee who have successfully completed a Cal-OSHA~~
18 ~~30-hour general industry outreach course offered by a training~~
19 ~~provider that is authorized by an OSHA Training Institute~~
20 ~~Education Center to provide the course. This paragraph shall not~~
21 ~~be construed to alter or amend existing requirements for employers~~
22 ~~to provide occupational safety and health training to employees.~~
- 23 ~~(B) An applicant with only one employee shall not be subject~~
24 ~~to subparagraph (A).~~
- 25 ~~(C) For purposes of this paragraph “employee” has the same~~
26 ~~meaning as provided in subparagraph (B) of paragraph (5) and~~
27 ~~“supervisor” has the same meaning as provided in subparagraph~~
28 ~~(C) of paragraph (5).~~
- 29 ~~(b) An applicant shall also include in the application a detailed~~
30 ~~description of the applicant’s operating procedures for all of the~~
31 ~~following, as required by the licensing authority:~~
- 32 ~~(1) Cultivation.~~
33 ~~(2) Extraction and infusion methods.~~
34 ~~(3) The transportation process.~~
35 ~~(4) Inventory procedures.~~
36 ~~(5) Quality control procedures.~~
37 ~~(6) Security protocols.~~
38 ~~(7) For applicants seeking licensure to cultivate, the source or~~
39 ~~sources of water the applicant will use for cultivation, as provided~~
40 ~~in subdivisions (a) to (c), inclusive, of Section 26060.1. For~~

1 purposes of this paragraph, “cultivation” as used in Section 26060.1
2 shall have the same meaning as defined in Section 26001. The
3 Department of Food and Agriculture shall consult with the State
4 Water Resources Control Board and the Department of Fish and
5 Wildlife in the implementation of this paragraph.

6 (e) ~~The applicant shall also provide a complete detailed diagram~~
7 ~~of the proposed premises wherein the license privileges will be~~
8 ~~exercised, with sufficient particularity to enable ready~~
9 ~~determination of the bounds of the premises, showing all~~
10 ~~boundaries, dimensions, entrances and exits, interior partitions,~~
11 ~~walls, rooms, and common or shared entryways, and include a~~
12 ~~brief statement or description of the principal activity to be~~
13 ~~conducted therein, and, for licenses permitting cultivation,~~
14 ~~measurements of the planned canopy, including aggregate square~~
15 ~~footage and individual square footage of separate cultivation areas,~~
16 ~~if any, roads, water crossings, points of diversion, water storage,~~
17 ~~and all other facilities and infrastructure related to the cultivation.~~

18 (d) ~~Provide a complete list of every person with a financial~~
19 ~~interest in the person applying for the license as required by the~~
20 ~~licensing authority. For purposes of this subdivision, “persons with~~
21 ~~a financial interest” does not include persons whose only interest~~
22 ~~in a licensee is an interest in a diversified mutual fund, blind trust,~~
23 ~~or similar instrument.~~